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1947. K File No. O- Foreigners/47

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Foreigners Act, 1946.

P.3

C O N T E N T S.

Legal Department File No.0 Foreigners/47.

O.No.	Compilation No.	Subject	Pages.
		Opinions under the Foreigners Act, 1946.	
1.	O.No.2065 1.3.1947	Sections 1,2 and 3 Delegation of powers to Provincial Government for issuing deportation orders under s.3(2) (a)	1 - 4.

S-Co.
M.V.V.
9/5.

SVH 2816 MVM 9815

Para. 1 of the note of U.S.P. and S.D. - The term "foreigner" as defined in section 1 of the Foreigners Act, 1864, denotes a person ---

(a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

(b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India

Provided that any British subject who under any law for the time being in force in British India ceases to be a British subject shall thereupon be deemed to be a foreigner.

In view of this defination, a person born in a Native State was ordinarily held to be a foreigner (cf.49 Bom.p.804) unless it was proved that he was a natural born British subject within the meaning of sub-sections (1) and (3) of section 1 of the British Nationality and Status of Aliens Act, 1914, or had been granted a certificate of naturalisation under that Act or under Indian Naturalization Act, 1926. A subject of the Portuguese State was also ordinarily considered as a foreigner.

However, the term "foreigner" as defined in clause (a) of section 2 of the Foreigners Act, 1946, means inter alia a person who is not a ruler or subject of an Indian State or a native of the Tribal areas (vide sub-clauses (iii) and (iv). In view of this specific provision, a subject of an Indian State or a native of the Tribal areas will no longer be a "foreigner", but a Portuguese Indian subject would be so. The deportation order will have to be issued under clauses (c) and (d) of sub-section (2) of section 3. The view expressed by the U.S.P. and S.D. is correct.

P.T.O.

Para. 2 of the U.S.P. and S.D's note: - The deportation orders issued under section 3 of the Foreigners Act,1864, prior to 25.11.1946, would be construed as those made under the corresponding provisions of section 3 of the Foreigners Act, 1946 (see section 8 of the General Clauses Act, 1897) and as such the defiance of the order will be punishable under section 13. If, however, a deportee who is a subject of an Indian State or a native of the Tribal areas, returns to British India in contravention of the order issued against him under section 3 of the Act of 1864, he being no longer a foreigner within the meaning of section 2(a) of the Foreigners Act, 1946, no action can be taken against such person.

If the foreigners deported under section 3 of the Foreigner Act, 1864, return to British India, such action as may be necessary will have to be taken against them under the Foreigners Act, 1946.

Para. 3 of U.S.P. and S.D's note - If the orders under section 3 of the Foreigners Act, 1864, are made but are not served on the foreigners concerned, it would be proper to take action and issue fresh orders under the provisions of the Foreigners Act, 1946.

Para. 4 of U.S.P. and S.D's note:- The view expressed is correct.

If approved, reply may be —
"Seen and returned.
The view expressed by the U.S.P. and S.D. in his note dated 15.2.1947 is correct." /A

Sd/-
25.2
A.L.R. I agree. Reply may be as suggested ~~xx~~ by A.S.

Sd/- 25.2

R.L.A. Sd/- 26/2.

U.O.R. to P. & S. Deptt. No.2048 dated 1st.March 1947.

4-Cs.
N.V.V.
9/5.